**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA	§	
	§	
V.	§	**CRIMINAL NO. 6:08-CR-25-1**
	§	
RICKY EUGENE JOHNSON	§	

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On September 14, 2011, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Ricky Eugene Johnson. The government was represented by Frank Coan, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by court-appointed federal defender Ken Hawk.

Defendant originally pled guilty to the offense of Conspiracy to Utter Counterfeit Obligations of the United States, a Class D felony. The offense carried a statutory maximum imprisonment term of 5 years. The United States Sentencing Guideline range, based on a total offense level of 13 and a criminal history category of IV, was 24 to 30 months. On February 24, 2009, District Judge Michael Schneider sentenced Defendant to 24 months imprisonment subject to the standard conditions of release, plus special conditions to include financial penalties; financial disclosure; credit restrictions; gambling prohibition; and substance abuse testing and treatment. On April 30, 2010, Defendant completed the term of imprisonment and began his term of supervised release.

Under the terms of supervised release, Defendant was prohibited, in relevant part, from (1) committing another federal, state, or local crime; (2) any unlawful use of a controlled substance; and (3) from associating with any persons convicted of a felony or engaged in criminal activity. In its

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petition, the government alleges that Defendant violated his term of supervised release by possessing drug paraphernalia, testing positive for methamphetamine,[1] and associating with convicted felons. Fifth Circuit law permits a court to find that illicit drug use constitutes possession.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing methamphetamine or amphetamine, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). The Court shall then revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is 12 to 18 months. U.S.S.G. 7B1.4(a).

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing drug paraphernalia, associating with convicted felons, or using methamphetamine, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). The Court may then revoke supervised release or extend the term of supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade C violation is 6 to 12 months. U.S.S.G. 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to possession of methamphetamine. In exchange, the government agreed to recommend that Defendant serve 12 months and 1 day imprisonment with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that Ricky Eugene Johnson be committed to the custody of the Bureau of Prisons

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[1] Such an offense would also be a violation of Texas Health and Safety Code § 481.115.

for a term of imprisonment of 12 months and 1 day, with no supervised release to follow. It is further **RECOMMENDED** that the place of confinement be FCI Seagoville, Texas, not FCI Three Rivers.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Michael Schneider for adoption immediately upon issuance.

So ORDERED and SIGNED this 14th day of September, 2011.

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JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE